## **CONTRACT BETWEEN THE CITY OF AUSTIN**

### **AND**

# CEN-TEX CERTIFIED DEVELOPMENT CORPORATION, dba Community Loan Center of Austin (CLC) FOR SMALL-DOLLAR LOAN PROGRAM MA 5800 PA180000003

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Cen-Tex Certified Development Corporation, dba Community Loan Center of Austin (CLC) ("Contractor"), having offices at 2212 S. Congress Ave., Austin, TX 78704.

## **SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 <u>Responsibilities of the Contractor</u>. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 <u>Responsibilities of the City</u>. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 <u>Designation of Key Personnel</u>. The Contractor's Contract Manager for this engagement shall be Raquel Valdez, Phone: 512-912-9884, Email Address: <a href="mailto:rvaldez@bcloftexas.org">rvaldez@bcloftexas.org</a></u>. The City's Contract Manager for the engagement shall be Anitra Jones, Phone: (512) 974-3448, Fax: (512) 974-3420, Email Address: <a href="mailto:anitra.jones@austintexas.gov">anitra.jones@austintexas.gov</a>. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

## **SECTION 2. SCOPE OF WORK**

- 2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.2 <u>Tasks</u>. In order to accomplish the work described herein, the Contractor shall perform each of the tasks outlined in Exhibit A, Business & Community Lenders of Texas dba Community Loan Center of Austin Executive Summary, Statement of Work & Pricing and Exhibit B, Memorandum of Understanding between Community Loan Center of Austin and the City of Austin.
- 2.3 The Contractor shall request written approval from the City's Contract Manager before proceeding with any modification to documents related to this agreement, including:
  - 2.3.1 Exhibit A, Business & Community Lenders of Texas dba Community Loan Center of Austin Executive Summary, Statement of Work & Pricing.
  - 2.3.2 Exhibit B, Memorandum of Understanding between Community Loan Center of Austin and the City of Austin.
  - 2.3.3 Exhibit D, The loan application template that will be executed between the employee/borrower and BCL of Texas.

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### **SECTION 3. COMPENSATION**

3.1 <u>Contract Amount.</u> The Contractor will be paid in accordance with Exhibit A, Business & Community Lenders of Texas dba Community Loan Center of Austin Executive Summary, Statement of Work & Pricing and Exhibit B, Memorandum of Understanding between Community Loan Center of Austin and the City of Austin. In consideration for the services to be performed under this Contract, there will be no exchange of monies between the City and the Contractor and the City has no financial obligation to the Contractor.

### **SECTION 4. TERM AND TERMINATION**

- 4.1 **Term of Contract.** The Contract shall be in effect for a term of sixty (60) months.
  - 4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).
- 4.2 <u>Right To Assurance</u>. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 <u>Default.</u> The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.
- **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

- 5.1 **Insurance**: The following insurance requirements apply.
  - 5.1.1 General Requirements.

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- 5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.
- 5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.
- 5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- 5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- 5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- 5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office P. O. Box 1088 Austin, Texas 78767

- 5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- 5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

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- 5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- 5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
  - 5.1.2.1 <u>Commercial General Liability Insurance.</u> The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.
    - 5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - 5.1.2.1.2 Contractor/Subcontracted Work.
    - 5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.
    - 5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
    - 5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
    - 5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
  - 5.1.2.2 <u>Business Automobile Liability Insurance.</u> The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:
    - 5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.
    - 5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.
    - 5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
  - 5.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:
    - 5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.
    - 5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.
    - 5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.
  - 5.1.2.4 <u>Professional Liability/Technology Errors and Omissions Insurance</u>. The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or

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private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Cyber Liability Insurance.** The Contractor shall provide coverage of not less than \$2,000,000 each claim and \$2,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers, (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

5.1.2.6 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 Equal Opportunity.

- 5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 5.2.2 <u>Americans With Disabilities Act (ADA) Compliance</u>. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

## 5.3 Delays.

- 5.3.1 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
- 5.4 <u>Ownership And Use Of Deliverables</u>. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
  - 5.5.1 Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

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- Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.
- 5.5 <u>Rights to Proposal and Contractual Material</u>. All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- 5.6 <u>Publications</u>. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

### **SECTION 6. WARRANTIES**

## 6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
  - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City employee. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's or City employees' rights under this section.

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6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services under the Contract from the Contractor, and source conforming services from other sources.

### **SECTION 7. MISCELLANEOUS**

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

## 7.2 Workforce.

- 7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
  - 7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and
  - 7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 7.3 <u>Compliance with Health, Safety, and Environmental Regulations</u>. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
- 7.4 <u>Significant Event</u>. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:
  - 7.4.1 disposal of major assets;
  - 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
  - 7.4.3 any significant termination or addition of provider contracts;

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- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

## 7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

#### 7.5.2 Records Retention:

- 7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
- 7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

## 7.7 **Indemnity**.

## 7.7.1 Definitions:

- 7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
  - 7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

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- 7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- 7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.8 <u>Claims</u>. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.9 <u>Notices.</u> Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City: To the Contractor:

Cen-Tex Certified Development Corporation dba

City of Austin, Purchasing Office Community Loan Center of Austin (CLC)

ATTN: Marty James, Procurement Specialist III ATTN: Raquel Valdez, Contract Manager

P O Box 1088 2212 S. Congress Ave

Austin, TX 78767 Austin, TX 78704

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

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- 7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 <u>Prohibition Against Personal Interest in Contracts</u>. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 <u>Assignment-Delegation</u>. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 <u>Interpretation</u>. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

## 7.20 **Dispute Resolution**.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior

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level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

## 7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

## 7.22 **Subcontractors**.

- 7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
  - 7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

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- 7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- 7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- 7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.23 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.24 <u>Invalidity</u>. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

## 7.25 **Holidays**. The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.26 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.28 <u>Incorporation of Documents</u>. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: https://assets.austintexas.gov/purchase/downloads/standard\_purchase\_definitions.pdf
- 7.29 <u>Order of Precedence</u>. The Contract includes, without limitation, the Offer submitted, Specifications, and any exhibits and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
  - 7.29.1 this document;
  - 7.29.2 any exceptions to Exhibit A or Exhibit B accepted in writing by the City;
  - 7.29.3 Exhibit A, Business & Community Lenders of Texas dba Community Loan Center of Austin Executive Summary, Statement of Work & Pricing;
  - 7.29.4 Exhibit B, Memorandum of Understanding between Community Loan Center of Austin and the City of Austin;

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

CEN-TEX CERTIFIED DEVELOPMENT CORPORATION dba BUSINESS & COMMUNITY LENDERS OF TEXAS	CITY OF AUSTIN
By: Signature	By:Signature
Name: Aquel Valdlt Printed Name	Name: MAID JAMES Printed Name
Title: COO	Title: PROCUREMENT SPECIAUSI III
Date: 7/24/18	Date: 07/28/18

## **List of Exhibits**

Exhibit A	Business & Community Lenders of Texas dba Community Loan Center of Austin Executive
	Summary, Statement of Work & Pricing
Exhibit B	Memorandum of Understanding between Community Loan Center of Austin and the City of Austin
Exhibit C	Non Discrimination Certification, Section 0800
Exhibit D	Loan application template that will be executed between the employee/borrower and BCL of Texas

## BUSINESS & COMMUNITY LENDERS OF TEXAS DBA COMMUNITY LOAN CENTER OF AUSTIN

## **EXECUTIVE SUMMARY**

In the United States, more than half of the nation's consumers (56%) have subprime credit scores. Research from the Corporation for Enterprise Development (CFED), finds that consumer loan borrowers that cannot qualify for affordable and safe credit, are more likely to resort to high-cost predatory loans to meet every day financial needs. The CFED research also finds that one in five households rely on payday and auto title alternative financial services. Texas has some of the most lenient small-dollar lending regulations of any state. A combination of weak industry oversight and a large working low-income population has made Texas a profit center for many of the highest-cost loan providers. According to 2015 data from the state of Texas Office of Consumer Credit Commissioner (OCCC), Texas payday and auto title lenders charged Texas borrowers approximately \$69 million in loan fees, with costs averaging \$22.49 for every \$100 borrowed for a loan with a two-week to one-month term. The annualized interest rate on these expensive loans averages to about 660%. Unfortunately, most of these borrowers were not able to repay these loans on time and incurred high refinance fees. Research from the Pew Charitable Trusts discovered that in a year-long period, the average payday loan borrower in the US is indebted for five months, spending a whopping total of \$895 for what was initially a \$375 toan. Pew found that only 14% of payday borrowers can pay off the full loan within the standard two-week period. In 2015, auto title loan borrowers had to refinance these expensive loans twice, incurring roughly \$600 in fees on loans averaging \$1,104. Weak small-dollar lending state laws in Texas provide loopholes to predatory lenders, allowing them to broker consumer loans with high or in some cases unlimited fees. As a result, the number of payday loan and auto title loan stores have converged on low income neighborhoods in our cities and has grown 10 times faster than the Texas population in the last decade. With unlimited fees, some payday lenders can charge borrowers the equivalent of 1,000% APR on these short-term loans. Payday and auto title lenders in Texas extract over \$1.5 billion each year from mostly lower income borrowers who would otherwise spend most of this money on other necessities. Currently, Texas consumers have very little protection from payday lenders.

Started in 2011 in the Rio Grande Valley, the Community Loan Center program offers employees of participating companies fairly-priced small-dollar loans and free financial counseling/coaching and education. The Community Loan Center (CLC) program gives Certified Development Financial Institutions (CDFt's) like BCL of Texas and other non-profit organizations a way to combat predatory payday lending in their respective markets. Utilizing exclusively designed centralized software, loan funding and servicing features allows program partners to realize economies of scale otherwise not available if they each addressed the issue individually. The CLC program has since grown into a network and has been operating in various Texas markets such as Dallas and Austin (operated by BCL of Texas) and

Bryan/College Station, Houston, Laredo, and the Rio Grande Valley. To date, the five organizations that administer Community Loan Center programs in the state of Texas have made 25,231 loans totaling \$19,811,531. Cumulatively there is a total of 131 employers (including 21 cities, Dallas being the largest) with a total of 67,799 employees eligible to access the Community Loan Center program.

Every CLC local lender is a non-profit organization that has experience in lending within a specific service area which includes the geographic focus areas, BCL of Texas is the local lender that administers the CLC of Austin program. As a regulated lender with the Office of Consumer Credit Commissioner (OCCC) and with over 27 years of lending experience, BCL of Texas was incorporated in 1990 as an IRS 501c (3) nonprofit corporation with the mission to build stronger communities through lending and financial stability and asset building programs. BCL officially launched the Community Loan Center of Dallas in November of 2014 and soon after launched the Community Loan Center of Austin in April of 2016.

The Community Loan Center of Austin is an employer based benefit program that offers employees a way to access short-term, affordable small dollar loans as an option to avoid predatory lenders. This employee benefit comes at no monetary cost to participating employers. Employee loan approval is based on employment rather than credit, thus directly helping individuals that would otherwise not be approved by traditional lenders. Employees can use this benefit by applying on a user-friendly website (www.clcofaustin.org) for a loan up to \$1,000 (\$400 min.), with a maximum 18% interest rate and a \$20 administrative fee. Borrowers have up to 12 months to repay this loan with no prepayment penalties, BCL of Texas uses the CLC programs proprietary software and portal websites to administer the Community Loan Center of Austin program which includes the origination, processing and servicing of all loans. An additional online portal is accessible for employer partners to verify employment and determine total payroll deductions. BCL of Texas through the CLC of Austin program competes directly with payday and auto title lenders. In a side by side comparison, the CLC of Austin program can save City of Austin employees \$778 per loan compared to the cost of a payday loan for the same amount and loan term. To date BCL of Texas through the CLC of Dallas program has saved City of Dallas employees over 1 million dollars in loan fees. Currently in Central Texas there is no other alternative small dollar loan program that offers interest rates at 18% or below and for a term of 12 months. The Community Loan Center program is also the only small dollar loan program that is operated by a non-profit organization where all of the loan payments are returned to the loan fund and revolved in order to provide additional loans for future borrowers. BCL of Texas has and will always have the best interest of our communities in mind. Industry and public policy organizations such as RAISE Texas, Consumer Financial Protection Bureau, and Texas Appleseed have research to support the lack of alternative small dollar loan programs that lower the cost of fees incurred by the borrower. The Community Loan Center program has the lowest fees compared to all other alternative loan programs administered in Texas.

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## STATEMENT OF WORK (SOW)

- a) BCL of Texas will offer small dollar loans from a minimum of \$400 to a maximum of \$1000.
- b) The interest rate range is dependent on the amount borrowed and the term with a maximum rate of 18%, 21.63% APR.
- c) The term will not exceed twelve (12) months.
- d) There are no credit checks or collateral requirements for approval.
- e) BCL of Texas will request that the City of Austin will honor a voluntary wage assignment by employees for the loan payments to be sent directly to BCL of Texas, provided the employee completes and does not revoke the required authorization.

## **Optional Features**

- a) BCL of Texas will provide financial coaching and education class and services at no-cost. BCL of Texas, working in partnership with NeighborWorks® America, has developed a Financial Capability program to help individuals and families develop sound money management skills. Financial education is a critical need both for consumers and for communities. For consumers, financial education is the key to building wealth regardless of their incomes. For communities, financial education programs can help promote stronger and more stable neighborhoods where residents are more resistant to downturns in the economy and other financial threats. Financial education can help families become more aware of common pitfalls and thus avoid them. It can also help them learn the financial management and planning skills needed to make the most of their income, savings and assets.
- b) There are no other value add options at this time. BCL of Texas does provide foreclosure prevention counseling at no cost, small business coaching at no cost, and pre-purchase homeownership counseling at no cost. These additional services will not be presented to the City of Austin at this time.
- c) BCL does not plan to include any additional features.
- d) BCL does not plan to include any additional products and services.
- e) BCL will be open to incorporating additional services outlined by the City of Austin.

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## **CONTRACT STRUCTURE**

- a) BCL of Texas will enter into a revenue neutral contractual agreement where the City of Austin will have no fiscal responsibility relative to the administration of the Community Loan Center of Austin program.
- b) BCL of Texas will enter into a revenue neutral contractual agreement but the City of Austin will have no fiscal responsibility relative to the loans that are made by the Community Loan Center of Austin program to City of Austin employees.
- c) Copy of Community Loan Center of Austin documents have been attached.
  - A copy of BCL's Memorandum of Understand between the employer and BCL of Texas,
     the employer information questionnaire, and authorization to debit account is attached.
  - i. The loan documents that are executed between the employee/borrower and BCL of Texas are attached along with an explanation of the documents. Because the application is only available online, paper applications have been provided as attachments for review.
- d) BCL of Texas has an assumed name file with the Texas Secretary of State to operating under the Community Loan Center of Austin name.
- e) The loan is an unsecured loan. If the borrower was to become delinquent and enter into a default BCL of Texas would use their resources to collect the debt. After non-collection of 120 days the loan is charged off and structured for collection agency to assume.
- f) BCL of Texas charges a \$20 loan administration fee for each loan application. If a borrower reapplies for a new loan under 6 month BCL does not charge a new application fee. All loans applied for over 6 months are subject to a new application fee of \$20 as outlines by the regulated lender guidelines from the Office of Consumer Credit Commissioner (OCCC).

- g) The finance charge is computed by applying the scheduled installment earnings method as designed, to the under paid cash advance. This method is defined by the Texas Finance Code §342.002 as follows:
  - "(a)The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled principal reduction...
  - (c)For the purposed of Subsection (a) and (b), the daily rate is 1/365th of the equivalent contract rate..."
- h) BCL of Texas is ficensed as a regulated lender with the Office of Consumer Credit Commissioner (OCCC). To maintain compliance BCL of Texas has to submit annual recertification due on May 1st. OCCC also conducts random onsite audits of the Community Loan Center program. BCL of Texas has also signed licensing agreements stating that at all times BCL of Texas will comply with Texas State law on regulated lenders.
- i) There is no liability between The City of Austin and BCL of Texas.
  - i. All loans will be between BCL of Texas and City of Austin employees.

## <u>PRICING</u>

Expense Category (List Specifics)	Each Loan
Maximum Term Amount in US \$ Dollars	\$1,000.00
Loans may range from \$400 minimum to \$1000 maximum	Carl Carlot
Pay back period is 12 months	
Effective Interest Rate	\$96.45
Rates range with a maximum interest rate of 18%/ 21.63% APR	
Administrative Fees	\$20.00
Administrative Fee is a one time fee at origination of the transcation	

\$0.00
\$116.45



## **Memorandum of Understanding**

Dated:	 ,	2018

Between

## Community Loan Center of Austin ("CLC")

A Texas not for profit corporation with its principal office at 2212 S. Congress Avenue, Austin, Texas 78704 and a Dallas office at 1322 Record Crossing Rd, Dallas, TX 75235

and

## The City of Austin Texas

A Texas municipal corporation located in Travis County, Texas

This Memorandum of Understanding (MOU) is an alliance between the Community Loan Center of Austin (CLC), a program of Business & Community Lenders of Texas (BCL), and the City of Austin.

## I. MISSION

Business Community Lenders of Texas (BCL of Texas) mission is, in whole or in part, to provide financial products and services to the borrowers in Travis County principally in the area of consumer lending and financial literacy education. As part of this mission, BCL of Texas is engaged in the Community Loan Center Affordable Small Dollar Loans Program (the "*Program*") to provide a lower-cost alternative to high cost payday loans, pawn shops, check cashing, and signature loan outlets.

**Together**, the Parties enter into this MOU to implement and offer the Program to Employer's qualified employees as an alternative to predatory payday and title loans.

Loans of up to a maximum of \$1,000 will be available to City employees. Employees will be able to apply online anytime with a fully automated system. There will be a one-time loan processing fee of \$20.00 payable from the loan proceeds. The term of the loan will be at least 12 months and interest on the loan will be in accordance with law and will never exceed a rate of approximately 18% per annum. The employee will be able to repay the loan prior to the term without penalty. The employee may elect voluntarily to have payments deducted from the employee's payroll from the City.

Additionally, at least one time annually a trained financial coach from CLC will provide a seminar to all interested City employees on basic personal finance at no charge to City employees or the City of Austin.



## II. PURPOSE AND SCOPE

The purpose of the MOU is to create a framework of cooperation between CLC and the City of Austin to collaborate on this mutually beneficial lending and financial literacy education Program to be offered as a voluntary opportunity for City employees. Through these activities, the Parties will give qualified employees the opportunity to participate in the Program with equal access.

## III. <u>RESPONSIBILITIES</u>

Contact: Cruz Correa

**Community Loan Center of Austin:** 

Each party will appoint a person to serve as the official contact and coordinate the activities of each organization in carrying out this MOU. The initial appointees of the organization are:

The City of Austin:

Contact: Anitra Jones

Address: 2212 S. Congress Ave. Austin, TX 78704	Address: P.O Box 1088 Austin, TX 78767
Phone: <u>512-912-9884</u>	Phone: <u>512-974-3448</u>
Fax: <u>214-688-7465</u>	Fax:
The City of Austin's Responsibilities:	
apply for a loan.  The City of Austin agrees to upload d initiate payroll deduction payments for option, as well as, send a final payroll payment confirmation. (See Exhibit A Members of the City Council who supambassador for CLC and represent the advocating for the Program as necessary Upon request, members of the City C these experiences with the CLC mem	or employees that have chosen that payment I deduction file to CLC of Austin for deduction A: Copy of Consent to Payroll Deduction).  pport this Program may volunteer to be an ite mission of CLC at professional meetings



- Employer shall promptly add the Program to the Employer's customary descriptions of employee benefits.
- Employer shall promptly communicate to employees that the Program is available along with information on how to apply for a loan through internal communications and during New Hire Orientation.
- The following are suggestions as to different ways an Employer may notify their employees about the Program:
  - Employee Benefits website with a link to Program website to apply for a loan
  - Employee benefits literature (provided by lender)
  - Employee Intranet with a link to Program website to apply for a loan
  - Employee emails with a link to Program website to apply for a loan
  - Employee newsletters
  - Program posters in employee breakroom
  - Program literature in the HR department employee information rack (provided by lender)
  - Program 'Benefits Card'(provided by lender)

Please describe the steps you will take to get the word out to all of your eligible employees:

The City of Austin will communicate the program in HRUpdate, CitySource Today,

Intranet and New Employee Orientation. Information will be added to the Employee

Benefits Guide.

## **CLC's Responsibilities:**

- At the request of the City, CLC shall make an initial presentation to employees about the Program at the City's place of work.
- CLC will provide assistance setting up, monitoring, and evaluating the Program through the Program's software products and support.
- CLC will provide technical assistance in accessing required information related to the Program.
- Payroll deduction files are due from CLC before the end of the Tuesday preceding payroll processing. Upon deposit of the file to the secure site, an email will be sent to the City's Payroll Manager. Issues with payroll deductions are to be referred directly to CLC.



## **Both Parties Agree to the Following:**

- Initial meetings will be held between Parties to review implementation of this agreement and to establish policy directives as appropriate.
- When an employee leaves the City's payroll during the pendency of a loan repayment, CLC will be responsible for working out an alternate payment process with the former employee. The City will not be involved and under no circumstances will CLC look to the City for payment of any employee loan.
- Parties agree that the City of Austin will not be a beneficiary, nor profit directly or indirectly from the loan payments deducted from employee's payroll and transferred to CLC.
- Parties agree not to share employee information with unaffiliated third parties.
- Confidentiality: Parties agree not to use or release any reports, data, or other information identifying applicants or persons, except with the prior written approval of such applicant or person served and in accordance with the consumer rules and regulations and where applicable, federal and state laws and regulations. Such information shall be used only to assure proper administration, planning, coordination and monitoring of performance under this Agreement.

## IV. COST ALLOCATION/RESOURCE SHARING

CLC will be responsible for preparation of transactional documents, administrative and overhead expenses incurred by the CLC. CLC shall be responsible for submitting all necessary progress reports to its Board of Directors or other governing body and shall track all expenditures, for provision of the necessary checks and balances.

## V. <u>TERMS OF UNDERSTANDING</u>

This MOU may be reviewed at any time to ensure that it is fulfilling its purpose.

## VI. <u>MODIFICATION/TERMINATION</u>

This MOU constitutes an agreement between the parties hereto. This MOU may be modified, altered, revised, extended or renewed only by mutual written consent of all parties, pursuant to the issuance of a written amendment, signed and dated by all parties.

Either party to this MOU may terminate its participation in this MOU by providing at least 30 days' prior written notice of intent to terminate. In such case, termination by one or more of the parties to this MOU does not alter any surviving terms or obligations of the other party to this MOU.



Affordable Small Dollar Loans

## VII. DISCLAIMER

In performance of the services hereunder, CLC shall act on its own behalf and shall have no authority to act in any other capacity. City shall not be deemed an agent of CLC, and there is no joint venture formed between CLC and the City of Austin.

## VIII. EQUALEMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

CLC shall not discriminate against any City employee or applicant for a loan because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. CLC shall take affirmative action to ensure that loan applicants are treated fairly without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

## IX. AUTHORIZATION

On behalf of the organization I represent, I wish to sign this MOU and contribute to the further development of the Program.

CLC of Austin:	City of Austin:
Signature of Local Lender's Representative	Signature of Employer's Representative
7/2.4/18 Date	07/28/18 Date
Printed Name	Printed Name
Title	PSIII. Title



## Exhibit A

## CONSENT TO PAYROLL DEDUCTION

from my paycheck in the appropriate periodic	ereby authorize my employer to deduct payments installments as contained in the Promissory Note
between myself and the Community Loan Counderstand that I may revoke this authorizat with written notice.	enter until the balance is paid in full. I ion at any time by providing the CLC of Austin
Employee #	
Employee Signature	Date



## **AUTHORIZATION TO CHARGE ACCOUNT**

_	ntex Certified Development Corporations, dba: Community Loan
herein referred to as 'Employer'. Employer total payments made through payroll dedu	r agrees and authorizes the CLCATX to charge its account for the ctions by the Employer. Employer hereby authorizes CLCATX to from the Employer bank account number identified as follows:
NAME OF EMPLOYER'S BANK:	
NAME AS IT APPEARS ON EMPLOYE	R'S BANK ACCOUNT:
EMPLOYER'S BANK ROUTING NUM	BER:
EMPLOYER'S BANK ACCOUNT NUM	BER:
EFFECTIVE DATE:	
Employer's Bank Account identified above	ue each pay period will be automatically deducted from the e on each Employer payday according to the CLC Deduction thout any other further notice. Employer agrees to maintain suffic d payments.
Employer agrees to pay any fees for overce the payments and all fees incurred by CLC	rafts which may result from not maintaining sufficient funds to co ATX for the returned draft.
	ntil CLCATX receives a ten (10) day written notice of cancellation ten (10) day notice of termination to Employer.
Employer Representative	Date
CLCATX Representative	Date

## EXHIBIT C City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

## City of Austin, Texas

## **Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

## City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current nondiscrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY. WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

## Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

### Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

CONTRACTOR BCL of Texas, Raquel Valdez

Authorized

Signature

Title

Title

#### **CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE**

"me" and similar words mean ead	ch person who signs as a Borrower. "You" and	l "your" and similar words mean the Len	der.
ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE  The dollar amount the credit will cost me.	Amount Financed  The amount of credit provided to me or on my behalf.	Total of Payments  The amount I will have paid after I have made all payments as scheduled.
/ly Payment Schedule will be:	% \$	\$	\$
Number of Payments	Amount of Payments	When Payments Are Due	

#### ITEMIZATION OF AMOUNT FINANCED

- 1. Amount Financed: (2+3)
- 2. Amount given to me directly
- 3. Amount paid on my account (Net Balance Prior Account)
- 4. Prepaid Finance Charge (Administrative Fee)

I promise to pay the Total of Payments to the order of you, the Lender. I will authorize my employer to automatically make such payments out of my paycheck, paying you directly, or I will authorize you to electronically remove my payment from my bank account by Automated Clearing House ("ACH") transfer until I have notified you in writing that I no longer wish to make my payment by ACH transfer. I understand that this authorization is to remain in full force and effect until you have received written notification from me in such time and in such manner as to afford you a reasonable opportunity to act on it. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. The annual rate of interest is \_\_\_\_\_\_. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$25 for a returned check. You can add the fee to the amount I owe or collect it separately.

#### **EXHIBIT D**

I will be in default if:

I do not timely make a payment;

I break any promise I made in this agreement;

I allow a judgment to be entered against me or the collateral:

I sell, lease, or dispose of the collateral;

I use the collateral for an illegal purpose; or

You believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

### I agree:

- 1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
- 2. I promise that all information I gave you is true.
- 3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
- 4. I understand that you may seek payment from only me without first looking to any other Borrower.
- 5. I don't have to pay interest or other amounts that are more than the law allows.
- 6. If any part of this contract is declared invalid, the rest of the contract remains valid.
- 7. This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.
- 8. Federal law and Texas law apply to this contract.

Consumer Credit Hotline or write for cre	the State of Texas - Office of Consumer Credit Commissioner. Call the dit information or assistance with credit problems: Office of Consumer Credit evard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.
I agree to the terms of this contract. I red	ceived a completed copy on
XBorrower	Recibi la Forma Informe de Prestamo I received the Spanish Disclosure.
XBorrower	

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

- 1. <u>CONTRACTOR'S OBLIGATIONS</u>. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
- 3. CONTRACTOR TO PACKAGE DELIVERABLES: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- 4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
- 5. <u>TITLE & RISK OF LOSS</u>: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
- 6. <u>DELIVERY TERMS AND TRANSPORTATION CHARGES</u>: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
- 7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
- 8. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
- 9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

## 10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property.
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

## 12. **INVOICES**:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

## 13. **PAYMENT**:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/portal/category/21287

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

## 15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.
- 16. **SPECIAL TOOLS & TEST EQUIPMENT**: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

## 17. AUDITS and RECORDS:

A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

## B. Records Retention:

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
- ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
- iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

## 18. **SUBCONTRACTORS**:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
  - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract:
  - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

## 19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

- 20. <u>WARRANTY TITLE</u>: The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
- 21. WARRANTY DELIVERABLES: The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
  - A. Recycled Deliverables shall be clearly identified as such.
  - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
  - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
- 22. <u>WARRANTY SERVICES</u>: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
  - A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

- 23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
- 24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 25. **STOP WORK NOTICE**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
- 26. <u>DEFAULT</u>: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
- 27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 29. **FRAUD**: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

### 30. **DELAYS**:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

### 31. **INDEMNITY**:

### A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
  - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 32. **INSURANCE**: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

### A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. <u>Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions</u>
- 33. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

- 34. NOTICES: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
- 35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- 36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
- 37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City. Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

- 39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 42. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 44. <u>ASSIGNMENT-DELEGATION</u>: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 47. <a href="INTERPRETATION">INTERPRETATION</a>: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

### 48. **DISPUTE RESOLUTION**:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
- 49. <u>JURISDICTION AND VENUE</u>: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 50. **INVALIDITY**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
- 51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

### 53. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

### 54. EQUAL OPPORTUNITY

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. Americans with Disabilities Act (ADA) Compliance: No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

### 55. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph
  - i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

- iii. "Domestic end product" means-
  - (1) An unmanufactured end product mined or produced in the United States; or
  - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".



### City of Austin FSD Purchasing Office

### **Certificate of Exemption**

DATE: 08/24/2017 DEPT:

Human Resources Department

TO:

Purchasing Officer or Designee

FROM:

Karen Haywood

BUYER: Roger Stricklin

PHONE: (512) 974-3465

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

- The undersigned is authorized to submit this certification.
- The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
- a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- O a procurement necessary to preserve or protect the public health or safety of municipality's residents
- O a procurement necessary because of unforeseen damage to public machinery. equipment, or other property
- a procurement for personal, professional, or planning services
- a procurement for work that is performed and paid for by the day as the work progresses
- a purchase of land or right-of- way
- a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

- equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- O a purchase of rare books, papers, and other library materials for a public library
- O paving, drainage, street widening and other public improvements, or related matters, if at least one- third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- O a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- O a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- O personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
- cooperative purchasing administered by a regional planning commission established under Chapter 391
- O services performed by blind or severely disabled persons
- O goods purchased by a municipality for subsequent retail sale by the municipality
- O electricity
- O advertising, other than legal notices
- O Critical Business Need (Austin Energy Only)
- 3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.
  - Preserve and Protect the Public Health and Safety Describe how this purchase will preserve and protect the public safety of residents.
  - Sole Source Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
  - Personal Services Describe those services to be performed personally by the individual contracted to perform them.
  - Professional Services Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
  - Planning Services Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
  - Critical Business Need Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

- 4. Please attach any documentation that supports this exemption.
- 5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

Please see attached scope of work. The Business and Community Lenders of Texas DBA Community Loan Center (CLC) offers employees of participating companies fairly-priced small-dollar loans and free financial counseling/coaching and education. The CLC has the lowest fees and interest for loans as an alternative to payday and auto title loans for City of Austin employees compared to all other alternative loan programs in Texas.

We have reports of their program activities with the City of Dallas.

The services provided by CLC minimize the administrative support required of the City.

<ol><li>Because the above to Austin intends to cor</li></ol>	facts and documentation sup ntract with Business and Cor	port the requested nmunity Lenders o	exemption f Texas	, the City of
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# BUSINESS & COMMUNITY LENDERS OF TEXAS DBA COMMUNITY LOAN CENTER OF AUSTIN

### **EXECUTIVE SUMMARY**

In the United States, more than half of the nation's consumers (56%) have subprime credit scores. Research from the Corporation for Enterprise Development (CFED), finds that consumer loan borrowers that cannot qualify for affordable and safe credit, are more likely to resort to high-cost predatory loans to meet every day financial needs. The CFED research also finds that one in five households rely on payday and auto title alternative financial services. Texas has some of the most lenient small-dollar lending regulations of any state. A combination of weak industry oversight and a large working low-income population has made Texas a profit center for many of the highest-cost loan providers. According to 2015 data from the state of Texas Office of Consumer Credit Commissioner (OCCC), Texas payday and auto title lenders charged Texas borrowers approximately \$69 million in loan fees, with costs averaging \$22.49 for every \$100 borrowed for a loan with a two-week to one-month term. The annualized interest rate on these expensive loans averages to about 660%. Unfortunately, most of these borrowers were not able to repay these loans on time and incurred high refinance fees. Research from the Pew Charitable Trusts discovered that in a year-long period, the average payday loan borrower in the US is indebted for five months, spending a whopping total of \$895 for what was initially a \$375 toan. Pew found that only 14% of payday borrowers can pay off the full loan within the standard two-week period. In 2015, auto title loan borrowers had to refinance these expensive loans twice, incurring roughly \$600 in fees on loans averaging \$1,104. Weak small-dollar lending state laws in Texas provide loopholes to predatory lenders, allowing them to broker consumer loans with high or in some cases unlimited fees. As a result, the number of payday loan and auto title loan stores have converged on low income neighborhoods in our cities and has grown 10 times faster than the Texas population in the last decade. With unlimited fees, some payday lenders can charge borrowers the equivalent of 1,000% APR on these short-term loans. Payday and auto title lenders in Texas extract over \$1.5 billion each year from mostly lower income borrowers who would otherwise spend most of this money on other necessities. Currently, Texas consumers have very little protection from payday lenders.

Started in 2011 in the Rio Grande Valley, the Community Loan Center program offers employees of participating companies fairly-priced small-dollar loans and free financial counseling/coaching and education. The Community Loan Center (CLC) program gives Certified Development Financial Institutions (CDFt's) like BCL of Texas and other non-profit organizations a way to combat predatory payday lending in their respective markets. Utilizing exclusively designed centralized software, loan funding and servicing features allows program partners to realize economies of scale otherwise not available if they each addressed the issue individually. The CLC program has since grown into a network and has been operating in various Texas markets such as Dallas and Austin (operated by BCL of Texas) and

Bryan/College Station, Houston, Laredo, and the Rio Grande Valley. To date, the five organizations that administer Community Loan Center programs in the state of Texas have made 25,231 loans totaling \$19,811,531. Cumulatively there is a total of 131 employers (including 21 cities, Dallas being the largest) with a total of 67,799 employees eligible to access the Community Loan Center program.

Every CLC local lender is a non-profit organization that has experience in lending within a specific service area which includes the geographic focus areas, BCL of Texas is the local lender that administers the CLC of Austin program. As a regulated lender with the Office of Consumer Credit Commissioner (OCCC) and with over 27 years of lending experience, BCL of Texas was incorporated in 1990 as an IRS 501c (3) nonprofit corporation with the mission to build stronger communities through lending and financial stability and asset building programs. BCL officially launched the Community Loan Center of Dallas in November of 2014 and soon after launched the Community Loan Center of Austin in April of 2016.

The Community Loan Center of Austin is an employer based benefit program that offers employees a way to access short-term, affordable small dollar loans as an option to avoid predatory lenders. This employee benefit comes at no monetary cost to participating employers. Employee loan approval is based on employment rather than credit, thus directly helping individuals that would otherwise not be approved by traditional lenders. Employees can use this benefit by applying on a user-friendly website (www.clcofaustin.org) for a loan up to \$1,000 (\$400 min.), with a maximum 18% interest rate and a \$20 administrative fee. Borrowers have up to 12 months to repay this loan with no prepayment penalties, BCL of Texas uses the CLC programs proprietary software and portal websites to administer the Community Loan Center of Austin program which includes the origination, processing and servicing of all loans. An additional online portal is accessible for employer partners to verify employment and determine total payroll deductions. BCL of Texas through the CLC of Austin program competes directly with payday and auto title lenders. In a side by side comparison, the CLC of Austin program can save City of Austin employees \$778 per loan compared to the cost of a payday loan for the same amount and loan term. To date BCL of Texas through the CLC of Dallas program has saved City of Dallas employees over 1 million dollars in loan fees. Currently in Central Texas there is no other alternative small dollar loan program that offers interest rates at 18% or below and for a term of 12 months. The Community Loan Center program is also the only small dollar loan program that is operated by a non-profit organization where all of the loan payments are returned to the loan fund and revolved in order to provide additional loans for future borrowers. BCL of Texas has and will always have the best interest of our communities in mind. Industry and public policy organizations such as RAISE Texas, Consumer Financial Protection Bureau, and Texas Appleseed have research to support the lack of alternative small dollar loan programs that lower the cost of fees incurred by the borrower. The Community Loan Center program has the lowest fees compared to all other alternative loan programs administered in Texas.

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### STATEMENT OF WORK (SOW)

- a) BCL of Texas will offer small dollar loans from a minimum of \$400 to a maximum of \$1000.
- b) The interest rate range is dependent on the amount borrowed and the term with a maximum rate of 18%, 21.63% APR.
- c) The term will not exceed twelve (12) months.
- d) There are no credit checks or collateral requirements for approval.
- e) BCL of Texas will request that the City of Austin will honor a voluntary wage assignment by employees for the loan payments to be sent directly to BCL of Texas, provided the employee completes and does not revoke the required authorization.

### **Optional Features**

- a) BCL of Texas will provide financial coaching and education class and services at no-cost. BCL of Texas, working in partnership with NeighborWorks® America, has developed a Financial Capability program to help individuals and families develop sound money management skills. Financial education is a critical need both for consumers and for communities. For consumers, financial education is the key to building wealth regardless of their incomes. For communities, financial education programs can help promote stronger and more stable neighborhoods where residents are more resistant to downturns in the economy and other financial threats. Financial education can help families become more aware of common pitfalls and thus avoid them. It can also help them learn the financial management and planning skills needed to make the most of their income, savings and assets.
- b) There are no other value add options at this time. BCL of Texas does provide foreclosure prevention counseling at no cost, small business coaching at no cost, and pre-purchase homeownership counseling at no cost. These additional services will not be presented to the City of Austin at this time.
- c) BCL does not plan to include any additional features.
- d) BCL does not plan to include any additional products and services.
- e) BCL will be open to incorporating additional services outlined by the City of Austin.

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### CONTRACT STRUCTURE

- a) BCL of Texas will enter into a revenue neutral contractual agreement where the City of Austin will have no fiscal responsibility relative to the administration of the Community Loan Center of Austin program.
- b) BCL of Texas will enter into a revenue neutral contractual agreement but the City of Austin will have no fiscal responsibility relative to the loans that are made by the Community Loan Center of Austin program to City of Austin employees.
- c) Copy of Community Loan Center of Austin documents have been attached.
  - A copy of BCL's Memorandum of Understand between the employer and BCL of Texas,
     the employer information questionnaire, and authorization to debit account is attached.
  - i. The loan documents that are executed between the employee/borrower and BCL of Texas are attached along with an explanation of the documents. Because the application is only available online, paper applications have been provided as attachments for review.
- d) BCL of Texas has an assumed name file with the Texas Secretary of State to operating under the Community Loan Center of Austin name.
- e) The loan is an unsecured loan. If the borrower was to become delinquent and enter into a default BCL of Texas would use their resources to collect the debt. After non-collection of 120 days the loan is charged off and structured for collection agency to assume.
- f) BCL of Texas charges a \$20 loan administration fee for each loan application. If a borrower reapplies for a new loan under 6 month BCL does not charge a new application fee. All loans applied for over 6 months are subject to a new application fee of \$20 as outlines by the regulated lender guidelines from the Office of Consumer Credit Commissioner (OCCC).

- g) The finance charge is computed by applying the scheduled installment earnings method as designed, to the under paid cash advance. This method is defined by the Texas Finance Code §342.002 as follows:
  - "(a)The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled principal reduction...
  - (c)For the purposed of Subsection (a) and (b), the daily rate is 1/365th of the equivalent contract rate..."
- h) BCL of Texas is ficensed as a regulated lender with the Office of Consumer Credit Commissioner (OCCC). To maintain compliance BCL of Texas has to submit annual recertification due on May 1st. OCCC also conducts random onsite audits of the Community Loan Center program. BCL of Texas has also signed licensing agreements stating that at all times BCL of Texas will comply with Texas State law on regulated lenders.
- i) There is no liability between The City of Austin and BCL of Texas.
  - i. All loans will be between BCL of Texas and City of Austin employees.

### <u>PRICING</u>

Expense Category (List Specifics)	Each Loan
Maximum Term Amount in US \$ Dollars	\$1,000.00
Loans may range from \$400 minimum to \$1000 maximum	CLIPLE MINE TO THE
Pay back period is 12 months	
Effective Interest Rate	\$96.45
Rates range with a maximum interest rate of 18%/ 21.63% APR	
Administrative Fees	\$20.00
Administrative Fee is a one time fee at origination of the transcation	

Additional Fees	\$0.00
Total Expenses	\$116.45

# **Community Loan Center Corporation Service Organization Controls 1, Type 1**

# REPORT ON CONTROLS PLACED IN OPERATION FOR COMMUNITY LOAN CENTER CORPORATION

As of September 30, 2016



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Carr, Riggs & Ingram, LLC 3125 Central Boulevard Brownsville, Texas 78520

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### INDEPENDENT SERVICE AUDITORS' REPORT

Board of Directors Community Loan Center Corporation Brownsville, Texas 78521

### Scope

We have examined The Community Loan Center Corporation's (CLC) description of its Small Dollar Lending Program (SDLP) for the origination and servicing of small dollar loans as of September 30, 2016, and the suitability of the design of controls to achieve the related control objectives stated in the description.

### Service organization's responsibilities

On page 6 The CLC has provided an assertion about the fairness of the presentation of the description and suitability of the design of the controls to achieve the related control objectives stated in the description. CLC is responsible for preparing the description and for its assertion, including the completeness, accuracy, and method of presentation of the description and the assertion, providing the services covered by the description, specifying the control objectives and stating them in the description, identifying the risks that threaten the achievement of the control objectives, selecting the criteria, and designing, implementing, and documenting controls to achieve the related control objectives stated in the description.

### Service auditor's responsibilities

Our responsibility is to express an opinion on the fairness of the presentation of the description and on the suitability of the design of the controls to achieve the related control objectives stated in the description, based on our examination. We conducted our examination in accordance with the *Statement on Standards for Attestation Engagements (SSAE) 16*, established by the American Institute of Certified Public Accountant. Those standards require that we plan and perform our examination to obtain reasonable assurance, in all material respects, about whether the description is fairly presented and the controls were suitably designed to achieve the related control objectives stated in the description as of September 30, 2016.

An examination of a description of a service organization's system and the suitability of the design of the service organization's controls to achieve the related control objectives stated in the

description involves performing procedures to obtain evidence about the fairness of the presentation of the description of the system and the suitability of the design of the controls to achieve the related control objectives stated in the description. Our procedures included assessing the risks that the description is not fairly presented and that the controls were not suitably designed to achieve the related control objectives stated in the description. An examination engagement of this type also includes evaluating the overall presentation of the description and the suitability of the control objectives stated therein, and the suitability of the criteria specified by the service organization and described at page 11.

We did not perform any procedures regarding the operating effectiveness of the controls stated in the description and, accordingly, do not express an opinion thereon.

We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

### Inherent limitations

Because of their nature, controls at a service organization may not prevent, or detect and correct, all errors or omissions in processing CLC's small consumer loans. The projection to the future of any evaluation of the fairness of the presentation of the description, or any conclusions about the suitability of the design of the controls to achieve the related control objectives is subject to the risk that controls at a service organization may become ineffective or fail.

### **Opinion**

In our opinion, in all material respects, based on the criteria described in Community Loan Center Corporation's,

- a. the description fairly presents the Small Dollar Lending Program system that was designed and implemented as of September 30, 2016, and
- b. the controls related to the control objectives stated in the description were suitably designed to provide reasonable assurance that the control objectives would be achieved if the controls operated effectively as of September 30, 2016.

### Restricted use

This report is intended solely for the information and use of The Community Loan Center Corporation, user entities of CLC's Small Dollar Lending Program origination and servicing system as of September 30, 2016, and the independent auditors of such user entities, who have a sufficient understanding to consider it, along with other information including information about controls implemented by user entities themselves, when obtaining an understanding of user entities information and communication systems relevant to financial reporting. This report is not intended to be and should not be used by anyone other than these specified parties.

Caux Rigge & Ingram, L.L.C.

CARR, RIGGS & INGRAM, LLC Certified Public Accountants

Brownsville, Texas March 10, 2017

# **COMMUNITY LOAN CENTER CORPORATION'S ASSERTION**



# OF THE RIO GRANDE VALLEY Affordable Small Dollar Loans

Carr, Riggs, & Ingram 3125 Central Blvd. Brownsville, TX 78521

We have prepared the description of The Community Loan Center Corporation's (CLC) Small Dollar Lending Program (SDLP) system (description) for user entities of the system as of September 30, 2016, and their user auditors who have a sufficient understanding to consider it, along with other information, including information about controls implemented by user entities of the system themselves, when obtaining an understanding of user entities' information and communication systems relevant to financial reporting. We confirm, to the best of our knowledge and belief, that:

- 1. The description fairly presents the CLC's SDLP as of September 30, 2016 for origination and servicing of small loans. The criteria we used in making this assertion were that the description:
  - a) Presents how the system made available to user entities of the system was designed and implemented to process relevant transactions, including, if applicable:
    - The types of services provided, including, as appropriate, the classes of transactions processed;
    - ii) The procedures, within both automated and manual systems, by which services are provided, including, as appropriate, procedures by which those transactions are initiated, authorized, recorded, processed, corrected as necessary, and transferred to the reports and other information prepared for user entities of the system;
    - iii) The related accounting records, supporting information, and specific accounts that are used to initiate, authorize, record, process, and report transactions; this includes the correction of incorrect information and how information is transferred to the reports and other information prepared for user entities of the system;
    - iv) How the system captures and addresses significant events and conditions, other than transactions;

- v) The process used to prepare reports and other information provided to user entities of \_the system;
- vi) The specified control objectives and controls designed to achieve those objectives including, as applicable, complementary user entity controls contemplated in the design of those controls; and
- vii) Other aspects of our control environment, risk assessment process, information and communication systems (including the related business processes), control activities, and monitoring controls that are relevant to processing and reporting transactions of user entities of the system.
- b) Does not omit or distort information relevant to the scope of the CLC consumer SDLP system for processing consumer small loans while acknowledging that the description is prepared to meet the common needs of a broad range of user entities and their independent auditors and may not, therefore, include every aspect of the system that each individual user entity of the system and its auditor may consider important in its own particular environment.
- 2) The controls related to the control objectives stated in the description were suitably designed as of September 30, 2016 to achieve those control objectives. The criteria we used in making this assertion were that:
  - a) The risks that threaten the achievement of the control objectives stated in the description have been identified by us; and
  - b) The controls identified in the description would, if operating as described, provide reasonable assurance that those risks would not prevent the control objectives stated in the description from being achieved.

Signature:

Title: Community Loan Center Administrator



### **OVERVIEW OF OPERATIONS**

The Community Loan Center Corporation (CLC) was founded in 2011 by the RGV Multibank and funded by partners made up of nine member banks. The CLC offers low-interest, low-fee personal loans and have loaned approximately \$3.9 million to borrowers of the Rio Grande Valley.

The CLC Small Dollar Lending Program (SDLP) software is considered a Software As A Service System (SASS) and is designed to provide a user friendly graphical interface for the origination and servicing of small loans serviced by Community Loan Center lenders. The process of originating and servicing the loan occurs completely through an online portal that controls the application of the employee loan, the approval of the loan, the funding of the approved loan, and the subsequent receipt of the loan payment via an employer payroll deduction. Employees also have an option of mailing their payments if their employment status changes. Cash payments are not accepted at the CLC.

The SDLP offers employers of the community with access to fixed rate loans of 18% in addition to a \$20 administrative fee for their employees without a credit check in the range of \$400 to \$1,000. The balance of the loan is paid back within 12-month period and can be renewed at the end of the period or after half of the outstanding loan balance has been paid as long as the individual is employed 3 months before the initial application and remains employed. In the event the individual is no longer employed by a participating employer, the CLC contacts the individual and attempts to collect the remaining payments of the outstanding loan balance. The CLC does not request credit reports during any of the application process but does report delinquent accounts to the credit agencies after 120 days of non payment.

Employers interested in participating the CLC's small loan program sign a Memorandum of Understanding with the CLC and agree to the following:

- Agree to provide employment verification for all clients prior to loan funding and agree to set up payroll deduction for each employee for the repayment of the SDLP.
- Be an ambassador for CLC and represent the mission of CLC at professional meetings advocating for the SDLP as necessary.
- Upon request, share these experiences with the CLC members at general meetings to apprise all members of the SDLP stories, challenges, and successes in the Rio Grande Valley area.
- Initial meetings will be held between parties to review implementation of this agreement and to establish policy directives as appropriate.

### **OVERVIEW OF OPERATIONS (Continued)**

- Confidentiality: Parties agree not to use or release any reports, data, or other information identifying applicants or persons, except with the approval of such applicant or person served and in accordance with the consumer rules and regulations and where applicable, federal laws and regulations. Such information shall be used only to assure proper administration, planning, coordination and monitoring of performance under this Agreement.
- Parties agree not to share customer information with outside parties.
- This Memorandum of Understanding may be amended on the initiative of either party by submitting a proposed amendment in writing to the other party and agreement of that party to the amendment.

The SDLP software is divided into four main sections:

### 1. EMPLOYEE/BORROWER PORTAL

The employee/borrower portal allows employees to access the loan application process by providing the CLC with the following:

- Social Security Number (SSN)
- Driver's License or Other Identification
- Employment Information
- Bank Information
- References

Once the employee completes the application process, which includes the requested loan amount, the term, and payment method, the SDLP system links the employee's SSN with a new transaction for a new borrower or a loan renewal for existing borrowers. The loan applicant then submits their loan application for employment verification approval. The borrower can confirm their loan status through the employee portal and electronically sign the loan documents if approved.

### 2. EMPLOYEE PORTAL

The employee portal contains three main function areas for employees that include:

- Employment verification which begins with an email to the employer which is initiated by the SDLP once the employee completes the loan application process. To complete the task, the employer can respond directly to the email or log into the employer portal and verify the employee's employment information by indicating "verified" or "declined". A declined application initiates a declination letter to the employee.
- Once an employee's status has been verified and the loan is funded via ACH, the employer will
  receive another email requesting the payroll deduction so the employee can begin paying
  back the approved loan.
- The employer has the option to cancel the payroll deduction option which then alerts the CLC that alternative methods must be used to collect payment from the borrower.

### 3. SYSTEM ADMINISTRATION PORTAL

The administrators for the CLC SDLP system have access to a separate portal from employee borrowers and employers. The administrative portal gives the ability to view all of the tasks needed to operate the program, see reports for managing the program, interact with the online system to manage borrowers, funding, and compliance with state and federal laws. These functions include the following:

- **Application Queues** that provide administration with Employer Employment Verifications, pending employee signatures, and signed document downloads.
- Administrative review of funding sources before funding of loan is approved.
- Administrative pending ACH protocols that are used to fund the loan through the SDLP system which creates the NACHA file submitted to bank at 4:00 CMT each business day.
- Administrative payroll deduction queue which calculates the payroll deduction that employers must deduct based on the terms of the loan and number of days in the employers payroll cycle. The calculation is then transmitted to the Employer Payroll Deduction queue.
- Employer start payroll deduction queue details amounts to repaid through the employer which is also available through the employer portal.

### 3. SYSTEM ADMINISTRATION PORTAL (Continued)

- Servicing queues that process terminated employees, process declined funding letters, and subsequent notification letters.
- Data Management applications that provide electronic employer listings, employee listings, and financial participants. The information includes employee data, employee banks, employee loans, notes, references, documents, change logs, queue history, and charge-offs. Charge offs are initiated after management determines loan collection is no longer feasible.
- Accounting is divided into seventeen categories to assist administrative staff in reporting on their loan activity. The categories are as follows:
  - 1. Daily Summary Summarizes daily activity on the days or dates selected.
  - Daily Detail Provides a detail view of all activity that occurred on the day selected.
  - Payroll deduction Provides a scheduled deductions by employer or employee, manual deductions or deductions that have been skipped within the date range selected.
  - 4. **Payments** Creates a payment report based on the parameters selected by the user showing the loan number, borrower, balances, and payment type.
  - Misc Transactions Report provides the user with charges added or credited to employee accounts, such as NSF refunds or charges, charge offs or payoff interest reversals.
  - Daily earned interest provides the daily interest earned on loans specified by the user using specified date parameters.
  - 7. Open loans reports open loans for a specific date or range of dates.
  - 8. **Renewal loans** reports existing borrowers that have taken out additional money before the payoff of the existing loan.
  - 9. **Delinquency** reports provide borrowers that are delinquent on payments based on an ageing of a user select range of days.

### 3. SYSTEM ADMINISTRATION PORTAL (Continued)

- ACH payments reports all payments collected via ACH for specified date or range of dates.
- 11. **Unearned interest** estimates the amount interest that will be collected on outstanding active loans.
- 12. Charge-offs reports loans in a selected period that were charged of the books for non payment.
- 13. **Business Summary** generates the daily activity in short for any day of date range selected.
- 14. Partner Billing for invoicing CLC partners and CLC RGV by producing charges for administrative fee and servicing fee based on end of month balances.
- 15. General ledger in an interface application that allows the SDLP system to produce a daily activity journal entry that posts to QuickBooks accounting system or to an excel spreadsheet.
- Reporting provides parameter driven reports listing all active employers, employer contacts, employee email addresses, declined applications, and expired applications.
- 17. **Utilities** allows administration to view of all available queues and post batch payments.
- Configuration is comprised of six sections that allow staff to review policies, change selected software parameters, and view applicable system data. The sections are as follows:
  - Change password requires users to change their password every 60 days. Passwords must be at least 8 characters long, contain at least 1 upper case character, contain at least 1 lower case character, contain at least 1 number, and contain at least one special character.
  - Administrative users provides all employees that have access to the Administrative portal. It also allows administration to grant full access to the admin portal or partial access.

### 3. SYSTEM ADMINISTRATION PORTAL (Continued)

- 3. **Employer users** allows administration to add new employers to have access to the software.
- 4. Partner users allows administration to add new local Partner Users to the software system.
- 5. **Job Summary** provides administration with the system's scheduled or automatic functions.
- 6. System Policies details important system policies for all users.

### 4. FINANCIAL PARTNER PORTAL

The financial partner portal is designed to give local financial partners working in the CLC program viewing access to activity relating to the SDLP and generate reports necessary to managing the program with limited access to make any changes to the system.

REVELENT ASPECTS OF THE CONTROL ENVIRONMENT, RISK ASSESSMENT, INFORMATION AND COMMUNICATION, AND MONITORING

### **CONTROL ENVIRONMENT**

The Community Loan Center Corporation (CLC) falls under the direction of the Board of Directors and senior management who set the tone regarding the importance of establishing effective internal controls and communicating the expected operational standards for the entity. Functional areas include:

- Administrative. Coordinates all aspects to the CLC's operations that include the
  development and implementation of the internal control system. The staff consists of
  administrators, managers for operational areas such as business relations, loan
  processing, account maintenance, ACH loan funding, and financial statement closing and
  reporting.
- Information System Support. Provides and maintains access to the hardware and SDLP software package. This includes granting and controlling user access, software updates, and maintaining the integrity of the SDLP system data base.
- Customer Support. Provides informational support to loan participants by providing vital user or loan information, assist applicants in the application process, and provides employee and employer portal support.
- Operations. Controls daily origination and servicing of loan accounts which includes loan approvals, loan ACH funding, loan payment receipts and deposits

Managers of each functional area report to the CLC Administrator. Periodic management meetings are held to discuss operational efficiencies, strategies to improve internal controls, and to communicate managerial directives.

Written position descriptions for all employees are maintained and updated by the human resources department. The positions are reviewed annually and revised based on managerial input. CLC policy requires annual written performance evaluations from their supervisor based on employee stated goals and objectives that are prepared throughout the year. Completed evaluations are reviewed by senior management and become a permanent part of the employees personnel file.

### RISK ASSESSMENT

The CLC does not have a formal risk assessment process that identifies documented or probable risks. However, an informal process is in place that does provide a means for management to discuss the effectiveness of the internal controls and to propose changes to the control structure based on procedural concerns expressed by managers and employees.

### **INFORMATION AND COMMUNICATION**

The CLC utilizes information both internally and externally to implement internal controls by effectively communicating their control objectives to each employee through various training avenues, employee meetings, verbal directives, and policy manuals. This process helps administration identify operational dynamics and the response and importance of each control responsibility.

### **Information Systems**

As part of the CLC's Small Dollar Loan Program (SDLP), a web-based loan origination and servicing system was developed to automate all major operational aspects of the loan program. The software provides users of the system with portal based applications to apply for a loan, process and approve the loan, fund the loan via ACH, and reconcile loan payments to the general ledger. Additionally, portal applications provide administrative users with a host of financial and data based reporting options.

The SDLP system is accessed through an encrypted cloud based service at the Rackspace. The company offers an extensive level of expertise in cloud based computing as well as managed security features protecting user and proprietary data. The data is firewalled and database files are based in Microsoft SQL. Additionally, the following system security procedures and protocols are in place:

- Managed Back-ups
- Secure Encryption of Social Security Numbers
- Source Code Repository
- Managed System Monitoring by Rackspace
- Secure Authentication System with Lock Outs and Encrypted Password
- Sophos Anti-Virus Scans

### **Information Systems (Continued)**

- Password Complexity Rules
- Utilized Microsoft SQL Server and .Net Development Environment
- SSL Certificates for Encrypted Traffic with the Web Application
- Utilization of Docu-sign for Trusted Secure Electronic Signatures
- Utilization of Mail-Gun for Email Delivery

### **MONITORING**

The CLC has implemented an informal operational monitoring process that centers on accessing automatically populated queues daily within the Administrative Portals to verify pending loan applications, approved loan applications, approved loans for funding, loans funded by ACH, received loan payments, and delinquent loan payments. This provides management with a proactive procedure to monitor activity within the SDLP system and determine if any transaction needs additional attention. Additionally, management has instituted a daily and monthly account reconciliation process that confirms payments received as reported by the SDLP system to amounts deposited into the bank.

# **CONTROL OBJECTIVES AND RELATED CONTROLS**

### **LOAN APPLICATIONS**

**Control objective 1.** Controls provide a reasonable assurance that loan applicants submit the required level of personal information that allows participating employers to verify employment.

**Description of controls** - The SDLP system requires each employee to enter specific personal information including the employee's employer, name, social security number (SS#), address, hourly pay rate, pay cycle, requested loan amount, payment terms, and bank information. The system will not allow the applicant to move to the next prompt of the application process unless all the required employee data is entered. Once all data is entered, the system will then link the applicant's SS# to a new loan transaction or to a loan renewal for existing borrowers. The system will decline borrowers who have not paid down half of the existing loans.

Comments - No deviations noted.

### **EMPLOYMENT VERIFICATION**

**Control objective 2.** Controls provide a reasonable assurance that a loan applicant's employment status is confirmed by their current employer before the loan applicant is approved for the requested loan amount and funded.

**Description of controls** - The SDLP system requires participating employers to verify submitted employment data through the Employer Portal before the loan can be approved for funding. If the employer fails to verify the applicant's employment, the application will remain in a pending queue until the employer either verifies the application or declines it. Applicants with verified employment will be presented with an electronic signature requests which allows the loan to be funded.

Comments - No deviations noted.

### **EMPLOYMENT VERIFIED & LOAN APPROVAL**

**Control objective 3.** Controls provide a reasonable assurance that the loan approved for funding is properly documented with the employee's signed loan documents and required disclosures.

**Description of controls** - The SDLP system requires verified employees to electronically sign and agree to the terms of the promissory note which discloses the interest rate, finance charges, amount financed, and total payments. Once the documents are signed, the loan is funded and an ACH deposit is sent to the applicant's bank account.

Comments - No deviations noted.

### **APPROVED LOANS AND ACH LOAN DEPOSITS**

**Control objective 4.** Controls provide a reasonable assurance that approved loans for the day are properly funded with available operational funds and ACH wiring instructions are properly transmitted.

Description of controls - The SDLP system will automatically verify the availability of loan funding by source and then establish the ACH protocol to fund the loan. The system will create the National Automated Clearing House Association (NACHA) file to transmit to the bank via email at 4:00 PM which instructs the bank to transfer the funds into the employee's bank account. Administration matches the ACH transmission details to the daily loans funded report and verifies the loans have been properly approved to be funded by the SDLP system. Manual ACH transmissions are not allowed through the SDLP system.

Comments - No deviations noted.

### LOAN PAYMENT PAYROLL DEDUCTION

**Control objective 5.** Controls provide a reasonable assurance that calculated loan payments are properly processed by employers through an employee payroll deduction.

**Description of controls** – The SDLP system will automatically calculate the necessary payroll deduction schedule and transfer this information via email to the employer and a notification to the Employer Portal. Once the employer sets up the payroll deduction it is noted within the employee's loan account.

Comments - No deviations noted.

### **RECEIPT OF LOAN PAYMENTS**

**Control objective 6.** Controls provide a reasonable assurance that ACH or manual check loan payments are accurately posted to the proper loan, reconciled to the total amount received, and deposited to the bank timely.

**Description of Controls** – If a manual check is received from the employer, the SDLP system provides administration with a batch loan payment processing utility configured by date, employer, payment schedule by outstanding loans. The admin user simply matches the amount received to the corresponding loan amount and the system automatically applies the loan payment to each individual loan. The system can then generate a payments received report that is used to manually generate a deposit slip which is then deposited to the bank on a daily basis. When an employer transmits its payroll deducted loan payments via an ACH, the same SDLP

### **RECEIPT OF LOAN PAYMENTS (Continued)**

system payment utility process is used to apply the loan payments to the proper loan account. Validated deposit slips are attached to the applicable payment received report and used as supporting documentation for the monthly bank reconciliation process.

Comments - No deviations noted.

### **DELINQUENT LOANS**

**Control objective 7.** Controls provide a reasonable assurance that delinquent borrowers are identified and alternative collection procedures are implemented.

**Description of controls** – At least twice a week, administration utilizes the SDLP system's "Delinquency" utility that creates reports identifying borrowers that are delinquent in their payments. Delinquent borrowers are advised by administration verbally and via email that the CLC has authorized an ACH draft of their bank account for the outstanding loan payment. If the borrower has insufficient funds to cover the ACH draft, administration contacts the borrower to request loan payment via cashier's check or money order. Delinquent payments over 120 days past due are considered uncollectible and charged off and reported to the applicable credit agencies.

Comments - No deviations noted.

### **MONTHLY CLOSING PROCESS**

**Control objective 8.** Controls provide a reasonable assurance that loan activity captured by the SDLP system is accurately transferred to the CLP's QuickBooks financial reporting system.

**Description of controls** – Administration has implemented a monthly closing process to import the SDLP system's daily activity into the QuickBooks financial reporting software. The General Ledger Utility function is used for the following control procedures:

- A QuickBooks import file is created with a user selected date which includes a corresponding Excel worksheet detailing the daily activity amounts to be imported and posted to the corresponding general ledger accounts.
- The daily activity import amounts from the excel worksheet are used to create a net account change per account schedule to verify the accuracy of the SDLP system's QuickBooks import file.
- The SDLP system import file is loaded into the CLC QuickBooks financial software system

### **MONTHLY CLOSING PROCESS** (Continued)

and reconciled to verify the accuracy of the import.

Comments - No deviations noted.

### **FINANCIAL STATEMENT GENERATION**

**Control objective 9.** Controls provide a reasonable assurance that generated financial statements by the CLC QuickBooks financial reporting software package reconcile with the daily activity reports generated by the SDLP system.

**Description of controls** - Administration reconciles all applicable balance sheet and income statement revenue accounts on a monthly basis and at year end to the SDLP system by utilizing the following control procedures:

- Daily activity reports are the basis to the reconciliation process by providing administration with documented outstanding loans, delinquent loans, charge-offs, interest income, and loan payment receipts. Totals within the daily activity reports are reconciled to generated financial QuickBooks financial statements.
- Administration reconciles all bank accounts to the bank statements within QuickBooks on a monthly basis by making any required adjustments to reflect the financial position of the CLC.

Comments - No deviations noted

### **SDLP SYSTEM INTERGRITY AND ACCURACY**

**Control objective 10.** Controls provide a reasonable assurance that the SDLP system operates within designed and acceptable parameters to ensure the integrity and accuracy of the generated financial data.

**Description of controls** – During the testing phase of the software's development, administration designed a host of mock loan application scenarios that provided the necessary feedback and results to determine the stability and accuracy of the software's core components and functions.

Based on the results of Administration's testing phase, the SDLP system was submitted to the Office of Consumer Credit Commissioner (OCCC) for consumer loan licensing purposes under Texas Financing Code Section 342 Subchapter E that governs E loan contracts. Code Section 342 required the loan software to meet and perform under certain parameters which includes the following

### **SDLP SYSTEM INTEGRITY AND ACCURACY** (Continued)

- The software limits the cash advance amount.
- The software's interest rate complies with Texas Code.
- The software uses permissible interest rate methods.
- The software properly assesses administration fee.
- The software limits the maximum loan term.
- The software addresses default charges in compliance to Texas Code.
- The software properly calculates refunds for unearned interest charges.
- The software prevents duplicate loans.
- The software uses plain language for the consumer.
- The software offers Spanish language options.
- The software provides receipts for cash payments
- The software maintains electronic records, maintains a loan register, and generates loan numbers for each loan approved.
- The software limits the after maturity interest rate to Texas Code specifications.
- The software includes a privacy notice for all borrowers as required by federal law.
- The software includes safeguards to protect customer information.
- The software requires "strong" passwords to gain access to the system.
- The software creates exception logs for log-on attempts, retracting payments, voiding loans, and administration over-rides.
- The software locks out users who don't enter the correct password.
- The software complies with Truth-in-lending disclosures required by federal law.

### **SDLP SYSTEM INTEGRITY AND ACCURACY (Continued)**

 The software maintains adverse action notices as required by Regulation B – Equal Credit Opportunity.

On September 8, 2014, the CLC RGV and the SDLP system was licensed to operate by the OCCC.

Comments - No deviations noted.

### SDLP SYSTEM USER ACCESS

**Control objective 11.** Controls provide a reasonable assurance that the SDLP system is protected by allowing only authorized users.

**Description of controls** – Access to the SDLP system is user name and password protected and is controlled by Administration by allowing only authorized access to user related functions. Users such as potential loan applicants, CLC employees, employment partner employees, and financing partners must comply with the following user application controls:

- Authorized users must renew their passwords every 60 days which must me at least 8
  characters in length and include at least one upper case, at least one number, and at least
  one special character.
- User accounts will be locked after 3 failed log-in attempts and must be unlocked by the system administrator.
- The system requires users to re-authenticate after 15 minutes of inactivity.
- Administration limits access and functionality to the SDLP system by the type of user through the System Admin Portal.

Comments - No deviations noted